STATE OF MICHIGAN

COURT OF APPEALS

SHELDON WETHERHOLT, Plaintiff-Appellee,	UNPUBLISHED March 27, 2007
v	No. 271349 Genesee Circuit Court
LEAH MCCARRICK, Defendant-Appellant.	LC No. 05-080986-NO

Before: Fort Hood, P.J., and Talbot and Servitto, JJ.

PER CURIAM.

Defendant appeals by leave granted an order denying her motion for summary disposition in this premises liability action. Based on plaintiff's legal status as a licensee, we reverse the trial court's grant of summary disposition in favor of plaintiff.

Defendant argues that the trial court should have granted her motion for summary disposition because the allegedly icy sidewalk at her residence did not comprise a hidden danger and the special aspects exception to the open and obvious doctrine is inapplicable to licensees or, in the alternative, that there existed no special aspects of the sidewalk to make it unreasonably dangerous or unavoidable. Our review of a trial court's decision on a motion for summary disposition is de novo. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003).

At the time of this incident, plaintiff and defendant had been in a dating relationship for an 11-year period. Plaintiff had been to and spent time at defendant's home on a number of occasions during the past year, since defendant had moved to this residence. Meteorological data confirmed the occurrence of a snowstorm or precipitation during the day of Saturday, April 5, 2003. As a result of losing power from that storm, defendant left her residence to stay with her daughter and son-in-law at their home. However, on Saturday evening, defendant's daughter and son-in-law shoveled and salted defendant's walkway, porch and driveway after the snow had concluded.

Before returning to her home on Sunday, April 6, 2003, defendant fell at another location. Plaintiff learned of defendant's fall when he contacted her by telephone. Defendant was not seriously injured by the fall and drove, on Sunday, to her home. Plaintiff met defendant at her residence and assisted her in carrying six to eight bags of groceries from her vehicle into the home without incident. Defendant avers that the salt distributed by her daughter and son-in-law the previous day was still visible that Sunday evening. Although temperatures were at or below

freezing Sunday evening no further precipitation occurred on Sunday or Monday before plaintiff's fall.

On Monday, April 7, 2003, the day of the accident, plaintiff drove to defendant's home to check on her. Plaintiff parked in defendant's driveway, exited his vehicle and traversed the area from his car across defendant's lawn to her front porch without significant incident. Plaintiff acknowledged that defendant's lawn was snow-covered. Despite having his cellular telephone in his pocket, when defendant did not immediately respond to plaintiff's knocking on her front door, plaintiff elected to return to his vehicle to telephone defendant. Plaintiff chose to return to his vehicle by using the sidewalk rather than retrace his route across the lawn because he had tripped on the flower edging on the way to defendant's front porch. While holding the ornamental railing abutting defendant's porch steps to the pavement, plaintiff descended the porch steps without incident. However, when stepping down to the sidewalk plaintiff asserts his left foot slipped causing him to land awkwardly on his right foot and fall to the ground, sustaining an ankle injury. Plaintiff indicated that he elected to return to his vehicle from defendant's porch using the sidewalk, "[b]ecause it appeared to be a clear area to walk." Plaintiff acknowledged that he did not see any ice or accumulations on the steps or sidewalk and only detected the presence of ice after he fell. Plaintiff asserted that at the time of his fall he was not looking at the steps or walkway but, rather, "was looking straight ahead as I was going down the steps." Although plaintiff indicates he detected the presence of ice after falling he does not definitively attribute his fall to the existence of the ice.

Neither party disputes plaintiff's legal status was as a licensee. The duty owed to a licensee is recognized as being extremely limited. "A landowner owes a licensee a duty only to warn the licensee of any hidden dangers the owner knows or has reason to know of, if the licensee does not know or have reason to know of the dangers involved. The landowner owes no duty of inspection or affirmative care to make the premises safe for the licensee's visit." *Stitt v Holland Abundant Life Fellowship,* 462 Mich 591, 596; 614 NW2d 88 (2000). Accordingly, a social guest or licensee assumes the ordinary risks associated with their visit. *James v Alberts*, 464 Mich 12, 19; 626 NW2d 158 (2001). Contrary to the analysis initiated in the trial court, the only question to be addressed is whether a genuine issue of material fact existed regarding whether defendant had knowledge or reason to know of the existence of a hidden danger on her property and whether defendant was aware of the danger.

Notably, plaintiff fails to present evidence that the alleged icy condition on defendant's sidewalk presented a hidden danger known to defendant and unable to be ascertained by plaintiff. As such, this Court's review does not require us to determine the broader issue of whether black ice constitutes an open and obvious condition. Snowfall or precipitation had occurred two days before plaintiff's fall, but no further accumulations were recorded. Following the precipitation defendant's sidewalk, porch and walkway had been cleared and salted. Plaintiff and defendant had both accessed defendant's home from her driveway without incident the evening before plaintiff's fall. Plaintiff acknowledged that he did not observe ice on the walkway and was looking straight ahead rather than down when descending the porch stairs onto the walkway. These facts cannot sustain an inference that defendant was aware of any hidden dangerous condition because it cannot be ascertained whether the alleged condition was recent or had existed for any significant length of time. Further, as a social host defendant had no affirmative duty to inspect her property for such a condition. Plaintiff failed to demonstrate that

defendant knew, or would have reason to know, of any hidden or dangerous condition solely attributable to the weather that would have obligated her to warn plaintiff.[1] In addition, the weather conditions were as easily ascertainable by plaintiff as by defendant and, thus, could not constitute a hidden condition.

Plaintiff's assertion that defendant's poorly maintained gutters led to an accumulation of black ice on the residence walkway comprises mere speculation. Plaintiff fails to demonstrate that the gutter condition was the cause of the alleged ice. More importantly, the condition of the gutters does not comprise a hidden defect. Defendant asserted that her gutters were regularly cleaned twice a year and that her son had secured the gutters in areas where they had separated from the structure. Further, plaintiff was a frequent visitor to defendant's home. Plaintiff had ample and sufficient opportunity to observe the condition of the gutters and sidewalks on the property and had never previously experienced any problems with regard thereto, despite plaintiff's acknowledged occasional assistance to defendant in lawn maintenance and snow removal.

In addition, even if the gutters were defective, plaintiff's assertion that they were the cause of the ice accumulation, which resulted in his fall, is purely speculative. Plaintiff merely demonstrated that icicles formed from the gutters but did not demonstrate any relationship between the gutters and the alleged icy condition on the sidewalk. Based solely on these facts, the trial court should have granted summary disposition in defendant's favor. Because there was no genuine issue of material fact that plaintiff was a licensee it would be error for this Court to address or give credence to plaintiff's arguments premised on a discussion of the duties owed to invitees. Hence, as a result of the limited duty owed by defendant to plaintiff as a licensee and his failure to demonstrate defendant was aware, or the existence, of any hidden defect it is unnecessary for this Court to consider whether the alleged black ice condition was open and obvious or to undertake a special aspects analysis.

Reversed.

/s/ Karen M. Fort Hood
/s/ Michael J. Talbot

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[1] Although plaintiff asserted that defendant's deposition testimony revealed her knowledge of the presence of ice, there was no such unequivocal admission. Rather, defendant was shown photographs of the scene taken sometime after the fall wherein defendant referred to "shaded" or "darker" areas in the photograph. In response to leading questions by plaintiff's counsel, defendant indicated that she "thought" those areas might be ice. This testimony does not satisfy the evidentiary requirements to create a genuine issue of fact.